

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GREGORY SHANE HEGE,)	
)	
Plaintiff,)	
)	
v.)	1:20CV1171
)	
KILOLO KIJAKAZI, ¹)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

ORDER

This matter is before this court for review of the Memorandum Opinion and Recommendation filed on February 23, 2022, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 16.) In the Recommendation, the Magistrate Judge recommends that Plaintiff's Motion for Judgment Reversing the Decision of the Commissioner of Social Security, (Doc. 10), be denied, that Defendant's Motion for Judgment on the Pleadings, (Doc. 13), be granted, and that this action be dismissed with prejudice. The Recommendation was served on the parties to this

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted, therefore, for Andrew Saul as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

action on February 23, 2022. (Doc. 17.) Counsel for Plaintiff filed timely objections, (Doc. 18), to the Recommendation, Defendant responded, (Doc. 19), and Plaintiff filed a reply to Defendant's response, (Doc. 20).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.²

This court has appropriately reviewed the portions of the Recommendation to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court finds that Plaintiff's objections do not change the substance of the United States Magistrate Judge's Recommendation, (Doc. 16), which is affirmed and adopted.

² Defendant makes a compelling argument that Plaintiff has simply rehashed original arguments in his objections as to certain issues, and therefore de novo review is not required. (See Doc. 19 at 5-6.) This court agrees that "a mere restatement of the arguments raised in the . . . filings does not constitute an 'objection' for the purpose of district court review." Nichols v. Colvin, 100 F. Supp. 3d 487, 497 (E.D. Va. 2015).

Plaintiff makes a novel argument that the Magistrate Judge and this court should apply the Federal Rules of Civil Procedure and apply the familiar standard for a Rule 12(b)(6) motion. (See Doc. 20 at 6-7.)

Defendant contends the proper standard of review is whether substantial evidence supports the final decision of the Commissioner. (See Doc. 19 at 3-4.) This court finds the Magistrate Judge applied the proper legal standard.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 16), is **ADOPTED**. **IT IS FURTHER ORDERED** that Plaintiff's Motion for Judgment Reversing the Decision of the Commissioner of Social Security, (Doc. 10), is **DENIED**, that Defendant's Motion for Judgment on the Pleadings, (Doc. 13), is **GRANTED**, that the Commissioner's decision is **AFFIRMED**, and that this action is dismissed with prejudice.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 31st day of March, 2022.


United States District Judge